

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2003-193-C - ORDER NO. 2003-553  
OCTOBER 2, 2003

IN RE: Joint Application of NOW Communications, Inc. and NOW Acquisition Corporation for Approval of Transfer of Assets, Transfer/Issuance of Certificate of Public Convenience and Necessity to NOW Acquisition Corporation and for Flexible and Alternate Regulation.	) ORDER GRANTING ) MOTION FOR ) EXPEDITED REVIEW, ) GRANTING ) APPLICATION FOR ) TRANSFER OF ASSETS, ) AND GRANTING ) AUTHORITY TO ) PROVIDE LONG ) DISTANCE AND LOCAL ) EXCHANGE SERVICE
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This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Joint Application of NOW Communications, Inc. ("NOW") and NOW Acquisition Corporation ("NAC") (collectively, the "Parties" or the "Applicants") requesting the Commission's approval of a transfer of assets from NOW to NAC, the issuance of a Certificate of Public Convenience and Necessity to NAC to provide interexchange and local exchange telecommunications services in South Carolina, and for flexible and alternative regulations. The parties further requested expedited review of this matter.

NOW is a Mississippi corporation which provides resold and facilities-based telecommunications services throughout the United States. NOW recently filed a petition for reorganization under Chapter 11 of the U. S. Bankruptcy Code. As a part of that

proceeding, an asset purchase agreement has been entered by NOW and MCG Capital Corporation under which NAC, as MCG's assignee under the agreement, will acquire all of the assets of NOW and its subsidiaries.

NOW is authorized to provide local exchange and interexchange telecommunications services on a resold and unbundled network basis in South Carolina by Order No. 2001-969 issued by the Commission in Docket No. 98-387-C on September 27, 2001. NOW also holds authority to provide international telecom services as a non-dominant common carrier pursuant to authority of the Federal Communications Commission ("FCC"). NOW further provides interstate telecommunications services pursuant to FCC blanket authority available to non-dominant interstate interexchange providers.

NAC is a Delaware Corporation and a wholly-owned subsidiary of BiznessOnLine.com, Inc., which has been formed for the purpose of completing the acquisition of NOW and providing telecommunications services. NAC is not currently providing any telecommunications services but has been authorized to provide such service in the states of Georgia, Kentucky, New York, and North Carolina and has applications pending in 10 other states. The intent of the parties to the bankruptcy, and this proceeding, is to provide as much as possible a seamless transfer of NOW's customer base to NAC.

The Commission's Executive Director instructed NAC and NOW to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the affected areas. The Applicants complied with this instruction and provided the Commission with

proof of publication of the Notice of Filing. No Petitions to Intervene were filed with the Commission.

As part of the Application, NAC also seeks waivers of certain Commission regulations. NAC requests that it be exempt from any record-keeping rules or regulations that might require a carrier to maintain its financial records in conformance with the Uniform System of Accounts (USOA). NAC maintains its books of accounts in accordance with Generally Accepted Accounting Principles (GAAP) and NAC asserts that by using GAAP, the Commission will have a reliable means to evaluate NAC's operations. Next, NAC requests that it not be required to publish local exchange directories. NAC asserts that it will coordinate with the incumbent local exchange carrier for publication of NAC's customers' names in the telephone directories published by the ILECs and for distribution of those directories to their customers. Additionally, NAC requests a waiver of the Commission's requirement under 26 S.C. Regs. 103-610 to keep its records and reports in the State of South Carolina. According to the testimony, it would be a hardship on NAC, which maintains its principle place of business in Illinois, to maintain a separate set of books in South Carolina. NAC also requests a waiver of the Commission's requirement under 26 S.C. Regs. 103-612 to file a map showing its certificated area and/or exchange service areas. The Application reveals that NAC's service area will mirror BellSouth's service area.

Additionally, NAC requests that its local exchange service tariff filings be regulated under flexible regulation as approved in Docket Number 97-467-C. Moreover, NAC requests that its interexchange business services, consumer card, and operator

service offerings described in its proposed tariff be regulated under alternative regulation as approved by the Commission in Docket No. 95-661-C.

Despite no Motions to Intervene having been filed, NAC, on the recommendation of the Commission Staff, contacted the South Carolina Telephone Coalition (“SCTC”). As a result of that contact, NAC and the SCTC entered into a Stipulation Agreement which is a part of the record in this matter. The Stipulation provides, in relevant part, that NAC will only provide services to customers in non-rural areas of South Carolina. If it plans to deviate from this restriction, NAC agrees in the Stipulation to provide 90 days notice to the incumbent LEC and this Commission.

NAC subsequently requested Expedited Review of the Joint Application pursuant to 26 S.C. Code of Regulations 103-820 and 103-840 for approval of its Application. NOW and NAC provided the Commission with verified testimony of Mr. Donald Zyck, NAC’s Chief Financial Officer, and documentation evidencing that NAC possesses the financial, operational, and managerial resources required to provide high quality interexchange and local telecommunications service at competitive rates, terms and conditions.

Based upon the record before the Commission, the Commission makes the following Findings of Fact and Conclusions of Law:

#### **FINDINGS OF FACT**

1. NAC is organized as a corporation under the laws of the State of Delaware and is authorized to do business as a foreign corporation in the State of South

Carolina by the Secretary of State. NAC's principle place of business is located at 180 North Wacker, Suite 3, Chicago, Illinois.

2. NOW was authorized by this Commission to operate as a provider of local exchange on a resale and unbundled network element basis and interexchange telecommunications on a resale basis in South Carolina by Order No. 2001-969 issued in Docket No. 98-387-C on September 27, 2001.

3. The Commission finds that NAC possesses the necessary experience, capability, and financial resources to provide intrastate interexchange and local exchange telecommunications in South Carolina. S.C. Code Ann. Section 58-9-280(B)(1).

4. The Commission further finds that NAC possesses the tools necessary to provide communications services which will meet the service standards of the Commission. S.C. Code Ann. Section 58-9-280(B)(2).

5. Under the terms of the Stipulation Agreement entered between the Applicants and the SCTC, dated August 29, 2003, NAC has agreed to provide this Commission and the incumbent LEC with 30 days notice prior to offering service in incumbent rural LEC's service areas. A copy of the Stipulation Agreement is attached hereto as Exhibit 1 and is incorporated as part of this Order.

6. The Commission finds sufficient facts to support NAC's request to utilize General Accepted Accounting Practices ("GAAP") to maintain its books of accounts.

7. The Commission additionally finds sufficient facts to support NAC's request for a waiver of the requirement under Regulation 103-610 that all records must be kept in South Carolina. As the evidence in the record shows, NAC is headquartered in

Illinois and has agreed to make its records available to the Commission or its staff upon request.

8. The Commission finds sufficient facts to support NAC's request for a waiver of Regulation 103-631 regarding the mandatory publication and distribution of local exchange directories contingent upon NAC's performance of its pledge to enter into an agreement with BellSouth to include the names of its customers in BellSouth directories.

9. The Commission finds that the provision of local and intrastate interexchange service by NAC will neither adversely impact the availability of local exchange service nor adversely impact the public interest and further that NAC will support universally available telephone service at affordable rates. S.C. Code Ann. Section 58-9-280(B)(3), (4) & (5).

#### **CONCLUSIONS OF LAW**

1. NAC's request for Expedited Review is granted on the basis of the facts as stated in this Order and under the authority of Commission Regulations 103-820 and 103-840.

2. Based on the above findings of fact, the Commission approves and hereby Orders the transfer of assets in South Carolina of NOW to NAC and further determines that a Certificate of Public Convenience and Necessity should be granted to NAC to provide local exchange telecommunications and intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through its own facilities and through the resale of intrastate Wide Area Telecommunications

Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Service, 800 inbound service, intraLATA direct dialed services or any other services authorized for resale by tariffs of carriers approved by the Commission.

3. The terms of the Stipulation Agreement between NAC and the SCTC, dated August 29, 2003, are hereby approved and adopted and attached hereto as Exhibit 1 of this Order.

4. NAC shall file, prior to offering local exchange services in South Carolina, its final tariff of its local service offerings conforming to all matters discussed with Staff and comporting with South Carolina law in all matters. NAC's local telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. Specifically, the Commission adopts for NAC's competitive intrastate local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels that will have been previously approved by the Commission. Further, NAC's local exchange service tariff filings are presumed valid upon filing, subject to the Commission's right within thirty (30) days to institute an investigation of the tariff filing, in which case the tariff filing would be suspended pending further Order of the Commission. Further, any such tariff filings will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

5. The Commission adopts a rate design for NAC for its residential interexchange services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

6. NAC shall not adjust its residential interexchange rates below the approved maximum level without notice to the Commission and to the public. NAC shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential services reflected in the tariff which would be applicable to the general body of NAC's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 2002).

7. With respect to NAC's interexchange business service offerings, consumer card, operator services, and customer network offerings, the Commission adopts a relaxed regulatory scheme identical to that granted to AT&T Communications in



Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to NAC also. These alternative regulation orders were modified by Order No. 2001-997 in Docket No. 2000-407-C which imposed a cap on operator-assisted calls where a consumer uses a local exchange carrier's calling card to complete calls from locations which have not selected the local exchange carrier as their toll provider. The provisions of this Order and this modification also apply to NAC.

8. If it has not already done so by the date of issuance of this Order, NAC shall file its revised interexchange tariff and an accompanying price list within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

9. NAC is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

10. With regard to the NAC's resale of interexchange service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

11. NAC shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If NAC changes underlying carriers, it shall notify the Commission in writing.

12. With regard to the origination and termination of toll calls within the same LATA, NAC shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX inter-LATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the FCC pursuant to the Telecommunications Act of 1996 (47 CFR 51.209). NAC shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by Order No. 93-462.

13. NAC is required to file regular reports concerning their operations. NAC shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. Both the annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, NAC shall keep financial records on an intrastate basis for South Carolina in order to comply with the Commission's requirements of filing annual reports and gross receipts reports. The proper form for filing annual financial information in the annual reports can be found at the Commission's website at [www.psc.state.sc.us/forms](http://www.psc.state.sc.us/forms). The title of the forms which should be used to file the annual financial information are the "Annual Report for Competitive Local Exchange Carriers" and the "Annual Information on South Carolina Operations for Interexchange Companies and AOS." NAC shall file its annual reports by

April 1<sup>st</sup> of each year. Commission gross receipts forms are due to be filed with the Commission no later than August 31st of each year. The appropriate form for remitting information for gross receipts is entitled “Gross Receipts Form for Utility Companies” and may be found on the Commission’s website at [www.psc.state.sc.us/forms](http://www.psc.state.sc.us/forms). Additionally, pursuant to the Commission’s regulations, NAC shall file a “CLEC Service Quality Quarterly Report” with the Commission. The proper form for this report can be found at the Commission’s website at [www.psc.state.sc.us/forms/default.htm](http://www.psc.state.sc.us/forms/default.htm).

14. NAC shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, NAC shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. NAC shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The “Authorized Utility Representative Information” form can be found at the Commission’s website [www.psc.state.sc.us/forms](http://www.psc.state.sc.us/forms); this form shall be utilized for the provision of this information to the Commission. Further, NAC shall promptly notify the Commission in writing if the representatives are replaced.

15. The Federal Communications Commission (FCC) in July of 2000 required all telecommunications carriers throughout the United States to implement three-digit, 711, dialing for access to all Telecommunications Relay Services (TRS). The Commission issued a memorandum in March of 2001 instructing all South Carolina

telecommunications carriers to implement the service completely by October of 2001. All competitive local exchange carriers and incumbent local exchange carriers were instructed to include language in their tariffs introducing 711 as a new service offering with deployment by July 1, 2001 and to translate 711 dialed calls to 1-800-735-2905. All Payphone Service Providers (PSPs) were instructed to modify their programmable phones to translate calls dialed as 711 to the assigned TRS toll free number 1-800-735-2905 in order to route 711 calls to the TRS provider before October 1, 2001. Additionally, telephone directories were required to be updated and bill inserts promoting 711 were also required. NAC must comply with applicable mandates. For complete information on compliance with this FCC and Commission requirement, go to the Commission's website at [www.psc.state.sc.us/forms](http://www.psc.state.sc.us/forms).

16. NAC is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

17. NAC requests a waiver of Reg. 103-610, which requires that records required by the Commission's Rules and Regulations be maintained in South Carolina. The record reveals that NAC's principal headquarters is located in Chicago, Illinois, and NAC requests permission to maintain its books and records at its headquarters in that city and state. The Commission finds NAC's requested waiver reasonable and understands the difficulty presented to NAC should the waiver not be granted. The Commission therefore grants the requested waiver that NAC be allowed to maintain its books and records at its principal headquarters. However, NAC shall make available its books and records at all

reasonable times upon request by the Commission or the Commission Staff, and NAC shall promptly notify the Commission if the location of its books and records changes.

18. NAC also requests that it be exempt from record keeping policies that require a carrier to maintain its financial records in conformance with the Uniform System of Accounts (USOA). The USOA was developed by the FCC as a means of regulating telecommunications companies subject to rate base regulation. As a competitive carrier, NAC maintains its book of accounts in accordance with Generally Accepted Accounting Principles (GAAP). Moreover, NAC asserts that because it utilizes GAAP, the Commission will have a reliable means by which to evaluate NAC's operations and assess its financial fitness. Accordingly, NAC hereby requests an exemption from the USOA requirements. We grant NAC's request for the reasons stated above.

19. A final waiver was requested by NAC from the requirement under Regulation 103-631 that it be required to publish and distribute local telephone directories. We conclude that based on the findings of fact as stated above that NAC is entitled to a waiver of this requirement.

20. Title 23, Chapter 47, South Carolina Code of Laws Ann., governs the establishment and implementation of a "Public Safety Communications Center," which is more commonly known as a "911 system" or "911 service." Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs NAC to contact the appropriate

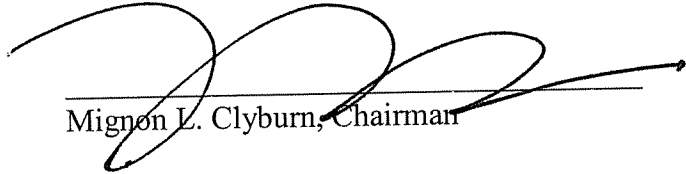
authorities regarding 911 service in the counties and cities where NAC will be operating. Contact with the appropriate authorities is to be made before beginning telephone service in South Carolina. Accompanying this Order is an information packet from the South Carolina Chapter of the National Emergency Number Association (“SC NENA”) with contact information and sample forms. NAC may also obtain information by contacting the E911 Coordinator at the Office of Information Resources of the South Carolina Budget and Control Board. By this Order and prior to providing services within South Carolina, NAC shall contact the 911 Coordinator in each county, as well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the NAC’s operations as required by the 911 system.

21. Each telecommunications company certified in South Carolina is required to file annually the Intrastate Universal Service Fund (USF) worksheet. This worksheet provides the Commission Staff information required to determine each telecommunications company’s liability to the State USF fund. The Intrastate USF worksheet is due to be filed annually no later than August 15<sup>th</sup>.


22. The Applicants shall notify the Commission when the transaction is closed and NOW shall submit to the Commission a request for cancellation of its Certificate of Public Convenience and Necessity.

23. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
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Mignon L. Clyburn, Chairman

ATTEST:

  
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Bruce F. Duke, Deputy Executive Director

(SEAL)

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

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RECEIVED  
009/2/03

Docket No. 2003-193-C

Re: Joint Application of NOW Communications, Inc. and )  
NOW Acquisition Corporation to Permit Transfer )  
of Assets and for a Certificate of Public Convenience )  
and Necessity to Provide Local Exchange )  
Telecommunications Services in the State of )  
South Carolina and for Flexible and Alternative )  
Regulation )

**STIPULATION**

The South Carolina Telephone Coalition ("SCTC") (see attachment "A" for list of companies) and NOW Acquisition Corporation ("NOW Acquisition") hereby enter into the following stipulations. As a consequence of these stipulations and conditions, SCTC does not oppose NOW Acquisition's Application. SCTC and NOW Acquisition stipulate and agree as follows:

1. SCTC does not oppose the granting of a statewide Certificate of Public Convenience and Necessity to NOW Acquisition, provided the South Carolina Public Service Commission ("Commission") makes the necessary findings to justify granting of such a certificate, and provided the conditions contained within this stipulation are met.
2. NOW Acquisition stipulates and agrees that any Certificate which may be granted will authorize NOW Acquisition to provide service only to customers located in non-rural local exchange company ("LEC") service areas of South Carolina, except as provided herein.
3. NOW Acquisition stipulates that it is not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas.

\_\_\_\_\_  
By *(Signature)*  
\_\_\_\_\_  
Attorney for NOW Acquisition



4. NOW Acquisition stipulates and agrees that it will not provide any local service, by its own facilities or otherwise, to any customer located in a rural incumbent LEC's service area, unless and until NOW Acquisition provides such rural incumbent LEC and the Commission with written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. Also, NOW Acquisition acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause.

5. NOW Acquisition stipulates and agrees that, if NOW Acquisition gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, and either (a) the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law within such 30-day period, or (b) the Commission institutes a proceeding of its own, then NOW Acquisition will not provide service to any customer located within the service area in question without prior and further Commission approval.

6. NOW Acquisition acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures, and guidelines do not conflict with Federal or State law.

7. The parties stipulate and agree that all rights under Federal and State law are reserved to the rural incumbent LECs and NOW Acquisition, and this Stipulation in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled.

8. NOW Acquisition agrees to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available telephone service at affordable rates.

9. NOW Acquisition hereby amends its application and its prefiled testimony in this docket to the extent necessary to conform with this Stipulation.

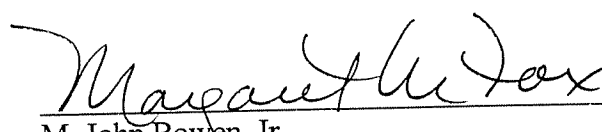
AGREED AND STIPULATED to this 29th day of August, 2003.

NOW Acquisition Corporation:

  
\_\_\_\_\_  
Scott Kellogg  
NOW Acquisition Corporation  
180 North Wacker Dr., Suite 3  
Chicago, IL 60606  
(312) 658-1056

Its Attorney

South Carolina Telephone Coalition:

  
\_\_\_\_\_  
M. John Bowen, Jr.  
Margaret M. Fox  
McNAIR LAW FIRM, P.A.  
Post Office Box 11390  
Columbia, South Carolina 29211  
(803) 799-9800

Attorneys for the South Carolina Telephone  
Coalition

**ATTACHMENT A**

**South Carolina Telephone Coalition Member Companies  
for Purposes of Local Service Stipulation**

ALLTEL South Carolina, Inc.  
Chesnee Telephone Company  
Chester Telephone Company  
Farmers Telephone Cooperative, Inc.  
Ft. Mill Telephone Company  
Home Telephone Company, Inc.  
Lancaster Telephone Company  
Lockhart Telephone Company  
McClellanville Telephone Company  
Norway Telephone Company  
Palmetto Rural Telephone Cooperative, Inc.  
Piedmont Rural Telephone Cooperative, Inc.  
Pond Branch Telephone Company  
Ridgeway Telephone Company  
Rock Hill Telephone Company  
Sandhill Telephone Cooperative, Inc.  
St. Stephen Telephone Company  
West Carolina Rural Telephone Cooperative, Inc.  
Williston Telephone Company

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

Docket No. 2003-193-C

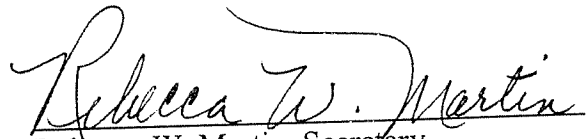
Re: Application of NOW Acquisition Corporation )  
for a Certificate of Public Convenience )  
and Necessity to Provide Local Exchange )  
Telecommunications Services in the State of )  
South Carolina )

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**CERTIFICATE OF  
SERVICE**

I, Rebecca W. Martin, do hereby certify that I have this date served one (1) copy of the foregoing Stipulation upon the following party of record by causing said copy to be deposited with the United States Mail, first class postage prepaid to:

Faye A. Flowers, Esquire  
Parker Poe Adams & Bernstein LLP  
PO Box 1509  
Columbia, SC 29202-1509

  
Rebecca W. Martin, Secretary  
McNAIR LAW FIRM, P.A.  
Post Office Box 11390  
Columbia, South Carolina 29211  
(803) 799-9800

August 29, 2003

Columbia, South Carolina